

Title V Operation Permit Process Memorandum
of Agreement between the Wisconsin Department of
Natural Resources and the United States
Environmental Protection Agency – Region 5

I. General Provisions and Background

- A. Purpose of this Memorandum of Agreement (MOA):** The purpose of this document is to establish a working agreement between the Wisconsin Department of Natural Resources (DNR) and Region 5 of the United States Environmental Protection Agency (EPA) for implementing the Title V Operation Permit Program as required in Wisconsin Statute and Wisconsin Administrative Code and approved by EPA through authority established in 40 CFR § 70.4.

This agreement outlines the concurrent review process for Title V Air Pollution Control Operation Permits by both agencies, increasing the efficiency of that review while maintaining public participation in the issuance of permits. Under this agreement, DNR will concurrently provide the Public Notice, Preliminary Determination (PD), and Draft Proposed Title V Air Pollution Control Operation Permit to the applicant, affected states, the public, and EPA in order to begin both the 30-day public comment period and EPA's 45-day review period at the same time. This process is outlined in greater detail in **II. Procedure for Title V Actions**.

This agreement applies to all Title V Air Pollution Control Operation Permit actions that require submittal of a proposed permit to EPA, which does not include minor revisions to Title V Air Pollution Control Operation Permits.

- B. Effect on Previous Agreements:** This MOA replaces the 2004 MOA between DNR and EPA, called "EPA 45-Day Review of Proposed Part 70 Operation Permits"
- C. Amendment and Cancellation:** This MOA may be modified at any time through the written agreement of both parties, or cancelled 90 days after written notification to that effect is provided by either party.
- D. Disclaimer:** The provisions in this document are intended solely as guidelines for EPA and DNR staff to use to coordinate the Title V permit review process in Wisconsin. These guidelines cannot be relied on to establish new standards or limits, are not binding on any party, and cannot be relied on to create any rights that are enforceable through litigation with EPA, DNR, or the State of Wisconsin.
- E. Legal Authority:** The review process outlined in this MOA is not prohibited by Wisconsin or Federal law.

Sections 285.62 (3) to (5), Wis. Stats., specify how DNR will review an application for an operation permit, prepare and publish a notice, receive comments from affected states and the public, and hold informational hearings on any operation permit review. This agreement does not alter or conflict with the statutory provisions of ss. 285.62 (3) to (5), Wis. Stats.

Section 285.62 (6), Wis. Stats. specifies that DNR will prepare a proposed permit, respond to affected state comments on the draft permit, and respond to an objection from EPA on any proposed permit. This agreement does not alter or conflict with the statutory provisions of s. 285.62 (6), Wis. Stats.

Section 505 (b)(1) of the Clean Air Act, 42 USC § 7661d (b)(1), allows EPA to object on any Title V permits during the review process. The DNR will not issue Title V Air Pollution Control Operation Permits unless DNR has made the changes necessary to satisfy any objection raised by EPA under 42 USC § 7661d (b)(1).

Section 505 (b)(2) of the Clean Air Act, 42 USC § 7661d (b)(2), allows any person to petition EPA within 60 days after the expiration of the 45-day EPA review period in § 7661 (b)(1), if EPA does not object under that section. This agreement does not violate the provisions contained within Section 505 (b)(2) of the Clean Air Act. This agreement does not affect the requirement for DNR to take an appropriate action in response to an objection from EPA that is based on a petition submitted under 42 USC § 7661d (b)(2).

II. Procedure for Title V Actions

- A. Preliminary Determination and Draft Proposed Permit:** Based upon the need for a Title V action (usually an application), the DNR prepares a Preliminary Determination (PD) which includes an analysis and states the basis of the department's approvability determination. The DNR also prepares a Draft Proposed Title V Air Pollution Control Operation Permit.
- B. Notice:** The DNR provides a notice to the applicant, affected states, and the general public about the PD, Draft Proposed Air Pollution Control Operation Permit, and 30-day time period for submitting comments on the Title V action on the DNR's publicly available website (hereafter referred to as the posting date) and in the Wisconsin State Journal newspaper.
- C. Beginning of Comment Period:** The posting date on the DNR's publicly available website is the start date of the 30-day public comment period. The posting date also marks when the Draft Proposed Permit is deemed to be provided to EPA for the purposes of determining the end of the concurrent 45-day EPA review period. EPA may check the website daily or at another frequency that EPA deems appropriate.
- D. Response to State and Public Comments:** The DNR will assure that EPA is informed of comments received on draft permits. The DNR will provide EPA with a Summary of Changes and Comments (SCC) memorandum that identifies if comments, including those from affected states, were received by DNR during the 30-day public comment period, summarizes and responds to any comments received, and describes any changes made to the

Draft Proposed Title V Air Pollution Control Operation Permit. The SCC memorandum will be posted to the DNR's publicly available website.

E. Sequential Review: If one of the following occurs then DNR will, after the end of the 30-day public comment period, prepare and post a Sequential Proposed Title V Air Pollution Control Operation Permit to DNR's publicly available website:

- Significant comments are received during the 30-day public comment period; or
- EPA requests a sequential 45-day review prior to the end of the concurrent 45-day EPA review period; or
- DNR decides to proceed with a sequential 45-day review.

The sequential 45-day EPA review period begins once the Sequential Proposed Title V Air Pollution Control Operation Permit is posted to DNR's publicly available website.

F. Permit Issuance: If, at the end of EPA's 45-day review period (either concurrent or sequential, as applicable), EPA has not objected to the issuance of the operation permit, DNR may issue the Final Permit.

G. EPA Objections: The DNR will provide EPA with a response in writing to any EPA objection if EPA provides the reasons for an objection and submits the objection to the DNR and the applicant during the 45-day review period.

The DNR will not issue the Title V Air Pollution Control Operation Permit unless the DNR has made changes to the Title V Air Pollution Control Operation Permit to satisfy any objection raised by EPA under § 42 USC 7661d(b)(1).

H. Title V Petitions: This agreement does not affect the requirement for DNR to take an appropriate action in response to an objection from EPA that is based on a petition submitted under 42 USC 7661d(b)(2).

III. Key Contacts

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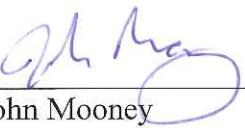
United States EPA Region V:

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For the Wisconsin Department of Natural Resources:

 on DATE November 18, 2019
Gail Good
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For the United States Environmental Protection Agency – Region 5:

 on DATE December 3, 2019
John Mooney
Acting Director
Air and Radiation Division